U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22717895

Date: NOV. 21, 2022

Motion on Administrative Appeals Office Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks "U-1" nonimmigrant classification under sections 101(a)(15)(U) and 214(p) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The Director of the Vermont Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner did not establish that he was the victim of a qualifying crime. We summarily dismissed the Petitioner's appeal as well as his subsequent combined motion to reopen and reconsider our decision. The matter is now before us on motion to reopen.

On motion, the Petitioner submits new evidence and evidence previously in the record and asserts that he was the victim of a qualifying criminal activity. Upon review, we will dismiss the motion to reopen.

I. LAW

A motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

A petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We determine, in our sole discretion, the credibility of and the weight to give to all of the evidence. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

In October 2014, Petitioner, a citizen of Ecuador, filed the underlying U petition in March 2016 based upon an attempted robbery perpetrated against him. The Director denied his U petition, and he appealed the matter to us. We summarily dismissed this appeal; we also dismissed the Petitioner's subsequent motion to reopen and reconsider our decision.

In our decision dismissing the Petitioner's combined motion to reopen and reconsider, incorporated here by reference, we found that the Petitioner had not established that he was a victim of a felonious

assault or a crime that was substantially similar to that of felonious assault, one of the qualifying criminal activities enumerated at section 101(a)(15)(U)(i)(I) of the Act.[1]

On motion to reopen, the Petitioner again contends that he was a victim of felonious assault, and submits an updated Supplement B certified in March 2022, a letter from a commander of the special crimes investigation division of the [redacted] Police Department (new certifying official), a new statement, and a copy of the police report in the record below. In Part 3.1 of the updated Supplement B, the new certifying official checked a box indicating that the Petitioner was a victim of criminal activity involving "Felonious Assault" or any similar activity. In Part 3.3, of this updated Supplement B, the official newly listed Minn. Stat. § 609.222 (Assault in the second degree) in addition to Minn. Stat. § 609.245 (Aggravated robbery) as the statutory citations investigated or prosecuted as perpetrated against the Petitioner.[2] When asked to briefly describe the criminal activity being investigated and/or prosecuted, the new certifying official added a sentence stating "[t]he suspects may or may not have used a weapon." Nonetheless, the updated Supplement B, when read as a whole and in conjunction with other evidence in the record, does not establish that law enforcement actually detected, investigated, or prosecuted the qualifying crime of felonious assault as perpetrated against the Petitioner. *See* 8 C.F.R. § 214.14(c)(4) (stating that the burden "shall be on the petitioner to demonstrate eligibility" and that "USCIS will determine, in its sole discretion, the evidentiary value of [the] . . . submitted evidence, including the . . . Supplement B").

The updated Supplement B's checked box and citation to assault in the second degree under Minnesota law is inconsistent with the remainder of the evidence in the record below. While the description of the event in the updated Supplement B states that there "may or may not have been a weapon involved," the police report submitted with the instant motion does not indicate the presence or use of a weapon during the robbery. Similarly, in the Petitioner's statement submitted with the instant motion to reopen, although he thought at the time of the robbery that the suspect might have had something in his fist, he "didn't recall seeing a weapon" as it was dark at the time.

The record lacks evidence sufficient to explain the inconsistencies between the updated Supplement B, the initial Supplement B, and the supporting police report. The letter from the official certifying the Supplement B submitted on motion states that the [redacted] Police Department "reviewed [the Petitioner's] request for completion of a [Supplement B]" and that after review it was determined that "he or she" appears to meet the requirements of 8 C.F.R. § 214.14. It does not identify what was reviewed, identify the criminal activity perpetrated against the Petitioner, and does not otherwise explain the reason behind the additional statutory citation to assault in the second degree in the updated Supplement B.

In these proceedings, the Petitioner bears the burden of establishing eligibility by a preponderance of the evidence, including that he was the victim of qualifying criminal activity detected, investigated, or prosecuted by law enforcement. Section 291 of the Act; 8 C.F.R. § 214.14(c)(4); *Chawathe*, 25 I&N

[1] "Qualifying criminal activity" is "that involving one or more of" the 28 types of crimes listed at section 101(a)(15)(U)(iii) of the Act or "any similar activity in violation of Federal, State, or local criminal law." Section 101(a)(15)(U)(iii) of the Act; 8 C.F.R. § 214.14(a)(9).

[2] On the Supplement B (initial Supplement B) in the record below, the first certifying official listed only Minnesota Statutes (MS) sections 609.24 and 609.245, simple robbery and aggravated robbery, respectively, as the specific statutory citations for the criminal activities investigated or prosecuted.

Dec. at 375. Moreover, USCIS determines, in its sole discretion, the credibility of and weight given to all the evidence, including the Supplement B. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4). Considering the totality of the evidence in the record, including the new evidence submitted on motion to reopen, the Petitioner has not established by a preponderance of the evidence that law enforcement detected, investigated, or prosecuted the qualifying crime of felonious assault or any other qualifying crime as perpetrated against him.

U-1 classification has four separate and distinct statutory eligibility criteria, each of which is dependent upon a showing that the petitioner is a victim of qualifying criminal activity. As the Petitioner has not established that he was the victim of qualifying criminal activity, he necessarily cannot satisfy the criteria at section 101(a)(15)(U)(i) of the Act. He therefore has not demonstrated his eligibility for U-1 nonimmigration status and we will dismiss his motion to reopen accordingly.

ORDER: The motion to reopen is dismissed.